PROSKAUER ROSE LLP
KENNETH D. SULZER (SBN 120253)
ksulzer@proskauer.com
MARK THEODORE (SBN 187538)
mtheodore@proskauer.com
IRINA CONSTANTIN (SBN 304523)
iconstantin@proskauer.com
2049 Century Park East, 32nd Floor
Los Angeles, CA 90067-3206
Telephone: (310) 557-2900
Facsimile: (310) 557-2193

Attorneys for Respondent,
BODEGA LATINA CORPORATION D/B/A EL SUPER

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WILLIAM M. PATE, Acting Regional Director of Region 21 of the National Labor Relations Board, for, and on behalf of, the NATIONAL LABOR RELATIONS BOARD Petitioner, v. BODEGA LATINA CORPORATION D/B/A/ EL SUPER, Respondent.	Case No. 2:15-cv-04228-GHK-AGR **RESPONDENT BODEGA LATINA CORPORATION D/B/A/ EL SUPER'S RESPONSE TO ORDER TO SHOW CAUSE** [Declarations of Carlos Silva-Craig, Rodolfo Aguirre and Mateo Cazarez filed concurrently herewith] Date: November 2, 2015 Time: 9:30 a.m. Courtroom: 650 Los Angeles, Roybal

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Respondent Bodega Latina Corporation, d/b/a El Super ("Company" or "Respondent"), by its undersigned counsel, respectfully submits this memorandum of law in response to this Court's Order to Show Cause why it should not be held in contempt for allegedly violating Paragraph 2(c) of the July 30, 2015 Temporary Injunction ("Injunction"), and why its Vice President of Human Resources, Mr. Carlos Silva-Craig should not be held in contempt for what is alleged to be a false statement in Paragraph 6 of his Declaration that, as of September 8, 2015, the Company made the ordered changes to its vacation policy.

I. INTRODUCTION

The Company has complied, through affirmative steps, with both the letter and the spirit of this Court's July 30, 2015 Temporary Injunction ("Injunction"). Pursuant to that Injunction, and within the thirty-day timeframe provided by the Court, the Company instituted changes to its vacation policy so that employees accrue one week of vacation time during their first year of employment, and their accrued time is calculated on a yearly basis upon the completion of each full year worked. The department with primary responsibility for the vacation policy, Human Resources, as well as the Payroll department, were specifically and unambiguously instructed by Company executives to administer the policy according to these guidelines. The vacation records submitted in connection with this response establish that they have done just that.

Instructions to implement the vacation policy pursuant to this Court's order were provided to the Human Resources and Payroll departments promptly, within days of issuance. These instructions were reiterated and reinforced throughout the month that followed. When an employee in her second year of employment – who would not have been entitled to vacation under the pre-Injunction administration of

the policy – asked to take vacation, she was given it. Employees who separated from employment before completing one year of service with the Company were likewise paid vacation upon separation, as if they began earning it from day one of service.

Although store directors are not entrusted with oversight or administration of the vacation policy, because they may serve as conduits between employees and the corporate office with respect to benefits-related matters, including vacation, they were advised of the Injunction's requirements as well. In addition, in order to ensure the utmost compliance with these changes, they were instructed to forward any and all vacation-related requests or inquiries from Union employees directly to Human Resources. These substantial, good faith efforts and the concrete evidence of implementation in the form of actual vacation payments, compel the conclusion that the Company has complied with the Court's Injunction and that the statement in Mr. Silva-Craig's September 8, 2015 declaration was accurate.

Further, the Company and the Region have settled the vacation allegations serving as a basis for the Injunction and, as part of the related compliance proceedings, the Company has provided the Region with all bargaining unit employees' vacation balances as of August 29, 2015 (thirty days after the Injunction was issued) for verification. In the Company's view, all balances reflect vacation earnings from the first day of employment.

Unfortunately, in a single instance, Store Director Rodolfo Aguirre, omitted to direct Ms. Reina Rosales' question to Human Resources, as he was instructed to do and, although he did not engage in the exact conversation set forth in Ms. Rosales' affidavit, it appears he left her with an inaccurate understanding of the Company's current vacation policy. Faced with a general question from Ms. Rosales and admittedly confused about the changes that were instituted himself, Mr. Aguirre provided her with a vague and ambiguous answer about her vacation

entitlements. She did not ask for, and he did not deny her the opportunity to take vacation. In spite of the general nature of Ms. Rosales' inquiry, however, it is acknowledged that Mr. Aguirre should have directed it to the Human Resources department for proper handling. Nevertheless, this one encounter, with a member of management who is not responsible for implementing or administering the vacation policy, does not amount to the type of clear and convincing evidence of non-compliance that would be necessary to hold the Company in civil contempt. This is especially the case here, where the Company has taken concrete steps to ensure its adherence to the Injunction.

Lastly, the Injunction should be lifted. The litigation in connection with which it was instituted has settled and, as such, its objective – to restore and maintain the *status quo* pending resolution of the litigation by the Board – no longer exists.

II. RELEVANT FACTUAL BACKGROUND

A. Procedural Background

On July 30, 2015, this Court issued a Temporary Injunction requiring the Company to, among other things, ensure that, within thirty days, its "vacation policy is implemented such that (a) employees accrue one week of vacation time during their first year of employment and (b) accrued time is calculated on a yearly basis, upon the completion of each full year worked." (Dkt. 45., ¶ 2 (c).) The Injunction was to remain in place pending litigation before the Board of allegations that, in June 2014, the Company unilaterally and unlawfully changed its vacation policy so that employees would no longer be permitted to accrue vacation in their first of employment, but only after completing one year of service. (*See* Dkt. 44, p. 6.) Finding sufficient reason to believe that the Company instituted the alleged

change, the Court ordered a reversal to the *status quo* pending final resolution of the allegations by the Board.

On August 7, 2015, the Company and the Region settled the vacation allegations, as well as all other allegations that served as bases for the Injunction, effectively ending the underlying litigation. (*See* October 13, 2015 Declaration of Irina Constantin, Esq., hereinafter "Constantin Decl.," ¶ 3 Ex. A.) The vacation-related obligations imposed upon the Company by the parties' settlement are identical to those of the Injunction and require the vacation policy to be implemented "such that (a) employees accrue one week of vacation time during their first year of employment and (b) accrued time is calculated on a yearly basis upon the completion of each full year worked." (*Id*., Ex. A at 5.) In addition, the settlement agreement provides that after review of the Company's records, the Region will determine whether bargaining unit employees are owed any additional vacation time, to be either credited to their vacation balances or paid out. (*Id*., Ex. A at 2.)

B. Compliance with the Injunction

Pursuant to the parties' settlement and, most importantly, the Court's Injunction, the Company took steps to ensure that all new employees earn vacation from the onset of their employment, that all others are treated as if they earned vacation from day one (rather from the beginning of their second year of service) and that earned vacation is calculated upon the completion of each full year worked.

On August 3, 2015, approximately four days after the Injunction was issued, Mr. Silva-Craig held a mandatory meeting with the three Human Resources Managers, the one Human Resources Specialist, and the Manager of the Payroll department. (October 13, 2015 Declaration of Carlos Silva-Craig, hereinafter "Silva-Craig Decl.," ¶ 6.) At this meeting, he announced that this Court entered an

order for injunctive relief in relation to the Company's application of the vacation policy. (*Id*.) Mr. Silva-Craig explained that this meant the Company had to immediately begin to recognize that all employees should be treated as if they earn vacation from day one of employment rather the beginning of the second year of service. (*Id*.) This meant that that going forward, Human Resources and, to the extent necessary, Payroll personnel, had to look at Union employee vacation balances as if employees were provided with an additional week of vacation. (*Id*.; October 13, 2015 Declaration of Mateo Cazarez, hereinafter "Cazarez Decl.," ¶ 3)

By August 4, 2015, the Company posted the Injunction ordering the changes to the vacation policy in all Union stores, and on August 5 and 6, 2015, Board agents read the Injunction to bargaining unit employees during mandatory meetings. (Silva-Craig Decl., ¶ 6.) The Injunction was read at store no. 12, in Arleta, California, at on August 6, 2015. (*Id*.; Declaration of Rodolfo Aguirre, hereinafter "Aguirre Decl.," ¶ 3.) The store's director, Mr. Rodolfo Aguirre, was present at the reading. (*Id*.)

On August 11, 2015, the Human Resources team was again advised of the required changes to the vacation policy. (Silva-Craig Decl., ¶ 7.) They were also informed that the Company had settled the vacation-related litigation with the Union under terms consistent with this Court's Injunction, and were reminded that according to those terms, vacation-related requests or inquiries from Union employees were to be handled as if those employees earned vacation on a yearly basis from their first year with the Company. (*Id*.; Cazarez Decl., ¶ 4.) Mr. Silva-Craig also explained that under the terms of the settlement, the Company might be required by the Board to take further action with respect to employees' vacation balances and potentially credit them according to the Board's calculations. (Silva-Craig Decl., ¶ 7.)

Similar conversations and communications followed throughout the month of August 2015, all echoing the same message – that the Company would treat Union employees as if they began earning vacation from the start of year one of service. (Silva-Craig Decl., ¶ 13.) By way of example, at another department-wide meeting held on August 27, 2015, Mr. Silva-Craig again communicated to everyone present that all employees with responsibility over vacations must treat unionized employees as if they earned an additional week of vacation during the first year of employment. (Cazarez Decl., ¶5.)

To ensure consistency in communication, on August 28, 2015, the same information was provided to Union store directors during a Company-wide store directors' meeting scheduled on that date. (Silva-Craig Decl., ¶ 9.)

Mr. Aguirre was absent from the August 28, 2015 store directors' meeting, as he was on a previously-scheduled vacation. (Aguirre Decl., ¶4, Ex. B.) [1]

On September 2, 2015, as store management began to receive questions concerning the changes to the vacation policy (many of them resulting from confusion about information disseminated by the Union in the stores), and as the Company wished to assure the utmost compliance and that "all vacation requests [we]re handled accurately and properly," Mr. Silva-Craig directed all store directors to route "any and all" such requests to the Human Resources department. (Silva-Craig Decl., ¶ 10, Ex. B.) Store directors generally have followed this directive, and have routed approximately seventy-six vacation-related inquiries to the corporate office since September 2, 2015. (*Id*., Ex. F.)

Throughout this period, the Company determined vacation availability for employees in accordance with the Injunction. The Company has identified one employee, Ms. Atchison, who took vacation shortly after the issuance of the Injunction and who would not have been permitted to do so under the Company's

[1] Vacation pay is denoted by the letter "V" next to the number of hours worked.

old vacation policy. Ms. Atchison began working for the Company on July 9, 2014 and reached her one year employment anniversary on July 9, 2015. During the month of August 2015, she asked for and was permitted to take 36.73 hours of vacation. (*See* Silva-Craig Decl., ¶16.)

In addition, the pay records of individuals whose employment with the Company was separated since the date of the Injunction evidence that their vacation earnings, too, were treated according to the Injunction's terms. In connection with preparing this response, the Company has identified ten employees who worked with it for less than one year and who were paid out vacation at separation as if they began earning it in day one of employment. (*See* Silva-Craig Decl., Ex. E.) For example, the employee whose last four Social Security number digits are 9456 began working for the Company on March 21, 2015 and left the his/her employment less than five months later, on August 14, 2015. At separation, he received payment for 10.60 hours of earned vacation. (*Id.*) The same is true for employee with Social Security number 7149, who also ceased to work for the Company after less than one year, and within the Company's deadline for implementing the changes ordered by the Court – August 28, 2015; he/she received payment for vacation earned since day one of year one (amounting to 9.4 hours). Similar payments were received by all of the other employees included as part of Exhibit E to the Silva-Craig declaration. It is undisputed that these employees would not have been entitled to these payments under the Company's old vacation policy, and the fact that the payments were made provides concrete evidence that changes to the policy were instituted pursuant to the Injunction.

Further, the Company has provided the Region with vacation balances for all bargaining unit members as of August 29, 2015, which the Region may verify. (Constantin Decl., ¶ 4, Ex. B.) The Company submits that those balances are

calculated as ordered by this Court. Notably, Ms. Reina Rosales' balance is among those turned over to the Region. As of August 29, 2015, she had 50.18 hours of available vacation time. (*Id*. at 6 (Employee ID 131409.)

C. Mr. Aguirre's Interaction with Ms. Reina Rosales

On September 16, 2015, Ms. Reina Rosales came to Mr. Aguirre's office and asked: "do I have vacation time?" (Aguirre Decl., ¶ 6.) She did not mention anything about having "already passed [her] one year of employment," as she states in her affidavit. (*Id*.) To the best of Mr. Aguirre's recollection, he responded that he would have to see, but that she would have to have met the necessary waiting period in order to be entitled to vacation. Ms. Rosales then said: "okay, good bye." (*Id*.) The conversation was very short, lasting less than a minute. (*Id*.)

Although Mr. Aguirre did not specifically tell Ms. Rosales that she would not be entitled to vacation until she completed two years with the Company, as she asserts in her affidavit, it is admitted and acknowledged that at the time of their conversation, Mr. Aguirre was confused about which version of the Company's vacation policy applied and under the mistaken belief that employees did not begin to accrue vacation until their second year of employment (in accordance with the old policy). (Aguirre Decl., ¶ 6.) The mistake Mr. Aguirre made resulted from confusion and momentary reliance on what he had known the old policy to be. (*Id*.) Notably, although he was aware of the Injunction and present during its reading at his store, he was absent from the August 28, 2015 meeting during which the Injunction's requirements were clearly explained to all Union store directors. (*Id*., ¶¶3-4; Silva-Craig Decl., ¶ 9.) He thus provided a passing response to Ms. Rosales, without considering the new information provided to store directors. (Aguirre Decl. ¶ 6.) He made a second error in omitting to go to Human Resources with Ms. Rosales' question, as he was instructed to do. He believed he was being

asked a general question only, and not a specific question about how much vacation Ms. Rosales had available or whether she could take a certain amount of vacation at a specific time – common inquiries which would have prompted him to contact the corporate office. (*Id.*, ¶ 7.) In addition, Mr. Aguirre went on vacation the following week, to take his daughter to college, and forgot about his brief exchange with Ms. Rosales. (*Id.*, Ex. C.)[2]

Upon learning of Ms. Rosales' affidavit and the fact that her question concerning vacation was not addressed to the Human Resources department, as directed, the Company called a conference call with Union store directors, again explaining the changes made to the vacation policy and reiterating that it was critical all for vacation inquiries to be routed to Human Resources for proper responses and accurate handling – a process that was set in place to prevent the exact type of miscommunication at issue here. I participated on this conference call, which took place on September 24, 2015. (Silva-Craig Decl., ¶ 12, Ex. C.)

III. ARGUMENT

A. Applicable Legal Standard

While the decision to hold a party in contempt rests with the discretion of the Court, it is recognized that "judicial contempt power is a potent weapon" that must be exercised with care. *See Int'l Longshoremen's Ass'n, Local 1291 v. Philadelphia Marine Trade Ass'*n, 389 U.S. 64, 76 (1967); *Transgo, Inc. v. Ajac Transmission Parts Corp.*, 768 F.2d 1001, 1022 (9th Cir.1985). Accordingly, a party seeking an order of contempt must meet the high standard of establishing, through clear and convincing evidence, that the alleged contemnor: (1) violated a court order; (2) beyond substantial compliance; (3) not based on a good faith and

[2] Mr. Aguirre does not recall ever having a conversation with Ms. Dina Villa Toro regarding vacation time, as alleged in Ms. Rosales' affidavit. (Aguirre Decl., ¶ 8.)

reasonable interpretation of the order. *Kukui Gardens Corp. v. Holco Capital Group*, Inc., 675 F. Supp. 2d 1016, 1023 (D. Haw.2009) (citing *In re Dual–Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir.1993)); *see also N.L .R.B. v. San Francisco Typographical Union No. 21*, 465 F.2d 53, 57 (9th Cir.1972) (applying the clear and convincing standard to allegations of contempt of preliminary injunction). Clear and convincing evidence "requires more than proof by a preponderance of the evidence." *Singh v. Holder*, 649 F.3d 1161, 1168 (9th Cir. 2011). To meet the clear and convincing standard, "a party must present sufficient evidence to produce 'in the ultimate factfinder an abiding conviction that the truth of its factual contentions [is] . . . highly probable.' " *Sophanthavong v. Palmateer*, 378 F.3d 859, 866 (9th Cir. 2004) (quoting *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984)). Stated differently, "[c]lear and convincing evidence must be of 'extraordinary persuasiveness.'… [It] means testimony that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *Shorehaven Corp. v. Taitano*, 2001 Guam 16, 2001 WL 793310 *5 (2001) (citations omitted); *see also Cook v. Principal Mut. Life Ins. Co.*, 784 F. Supp. 1513, 1517 (D. Mont. 1990) ("[c]lear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence"). Because civil contempt is a severe remedy, it "should not be resorted to where there is fair ground of doubt. *John T. ex rel. Paul T. v. Delaware Cnty. Intermediate Unit*, 318 F.3d 545, 552 (3d Cir. 2003).

B. The Company Has Complied with the Injunction in Good Faith, and the Board's Evidence in the Form of Ms. Rosales' Affidavit

Falls Far Short of Clearly and Convincingly Establishing Otherwise

Here, the Company fully complied with the Injunction order requiring it to implement changes to its vacation policy so that employees are treated as accruing one week of vacation on a yearly basis, starting in their first year of employment. It did so by specifically charging the two departments responsible for administering the policy to evaluate vacation eligibility and/or availability and answer questions and provide information according to the ordered guidelines. Tangible establishes that the members of those departments did just that. The one employee who requested vacation since the date of the Injunction and also stood to be impacted by the newly instituted changes – Ms. Atchitson – was provided with vacation. Having just completed her first year of employment, there is no question that she would not have been entitled to the vacation time she took had she not been treated according to the Injunction's requirements. There is also no question about the fact that Ms. Atchitson was awarded that vacation even *before* the Company's deadline for compliance. Just as clear an example of compliance is provided by the treatment of employees who worked for the Company for less than one year, and whose separation dates followed the Injunction. Like Ms. Atchitson, these employees were provided with vacation payments to which they would not have been entitled were the ordered changes to the policy not implemented.

In addition, the Company made other significant, good-faith efforts to ensure the utmost compliance. It made clear to store directors that all vacation-related inquiries should be routed to the Human Resources department for similarly appropriate handling, and to avoid the potential of miscommunication. Lastly, the Company provided the Region with the vacation balances of all bargaining unit employees as of August 29, 2015, the calculations of which the Company submits are consistent with the Court's order.

It is without question that the Company complied with what it was ordered to do, affirmatively and in good faith. Ms. Rosales' interaction with Mr. Aguirre does not establish otherwise. To begin with, Ms. Rosales was not denied vacation, which the Payroll department's records show she is eligible to take. She asked Mr. Aguirre a quick question about whether she was permitted to take vacation generally and, regrettably, without reviewing any information pertaining to Ms. Rosales' employment or directing her question to the appropriate department, he answered it in a way that admittedly could have left the impression the old policy was still in effect. As explained above, Mr. Aguirre is not authorized to speak to or administer the Company policy. Further, his absence from the August 28, 2015 store directors' meeting and his going on vacation shortly after speaking to Ms. Rosales resulted in his making an error in this one instance. The Company took prompt action to prevent similar errors from occurring again when it called a conference call with all Union store directors to reiterate the new vacation policy and the process they were expected to follow when faced with vacation-related requests or questions.

The Company has taken all reasonable steps to comply, and Mr. Aguirre's single, brief interaction with Ms. Rosales and her affidavit do not amount to clear and convincing evidence that could lead the Court to conclude, without a doubt, that the Company did not do what it was required to do. If anything, Mr. Aguirre's response to Ms. Rosales is more akin to a technical violation, which would still lead to the conclusion that in the very least, the Company is in substantial compliance and should not be held in contempt. *Vertex Distrib., Inc. v. Falcon Foam Plastics, Inc.*, 689 F.2d 885, 891 (9th Cir.1982) ("Substantial compliance" with a court order is a defense to civil contempt, and is not vitiated by "a few technical violations" where every reasonable effort has been made to comply.) Courts have often declined to hold parties in contempt where their compliance has

been somewhat less than perfect as a result of minor deviations. *See, e.g.*, *Hensley v. Haney-Turner, LLC*, No. CIVS-01-2212, 2007 WL 1599845, at *4 (E.D. Cal. June 4, 2007) (denying contempt application where court could not "determine whose version of the facts is correct" but nevertheless found that defendants "at a minimum . . . made and continue to make a good faith effort to comply" and even though "the work was not timely completed" the defendants at no time "refused to perform the work in any respect or failed to, at least, try to complete the work in a timely fashion" and further, upon learning of outstanding non-compliance, defendants immediately set out to fix those issues); *Forever 21, Inc. v. Ultimate Offprice, Inc.*, No. 2:10-CV-05485-ODW, 2013 WL 4718366, at *5 (C.D. Cal. Sept. 3, 2013) (where company ordered to remove trademark indicia from its clothing products attempted to punch out the indicia but the chads did not fall out, it was found to have committed a technical violations that was insufficient to vitiate its substantial compliance with the injunction; "[company]'s conduct in manually manipulating the garment labels to remove the protected marks demonstrate[d] that it ha[d] taken all reasonable steps within its power to avoid making use of [the] trademarks in compliance with the injunction."); *Robinson v. Delicious Vinyl Records Inc.*, No. 2:13-CV-04111-CAS, 2014 WL 1715520, at *3 (C.D. Cal. Apr. 30, 2014) (denying application for contempt where violations were made by third parties who were made aware that needed to comply with the requirements of the injunction, and enjoined party made efforts to prevent further violations once it was made aware of them); *TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 834 (9th Cir. 2011) (affirming lower court's refusal to find contempt where defendant substantially complied with injunction and the deviations were deemed "technical" in nature).[3] The Court should reach a similar conclusion here.

[3] *See also B2B CFO Partners, LLC v. Kaufman*, No. CV-09-2158, 2012 WL

C. The Litigation in Connection with which the Temporary Injunction Was Issued Has Ended, and, Therefore the Temporary Injunction Is No Longer Warranted and Should Be Dissolved

Because the Company has fully complied with the Injunction and has settled the underlying litigation in connection with which it was issued, the circumstances that originally necessitated injunctive relief are no longer present. As such, the Injunction should be dissolved.

"A court which issues an injunction retains jurisdiction to modify the terms of the injunction if a change in circumstances so requires." *Nicacio v. United States Immigration & Naturalization Serv.,* 797 F.2d 700, 706 (9th Cir. 1985); *see also Clark v. Coye,* 60 F.3d 600, 606 (9th Cir. 1995). Dissolution of an injunction may be warranted where there is "a significant change either in factual conditions." *Rufo v. Inmates of Suffolk County Jail,* 502 U.S. 367, 384, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992); *Sharp v. Weston,* 233 F.3d 1166, 1170 (9th Cir. 2000). "A significant change is one that pertains to the underlying reasons for the injunction." *Moon v. GMAC Mortgage Corp.,* 2008 WL 4741492, at *2 (W.D. Wash. Oct.24, 2008) (citing *United States v. Swift & Co.,* 189 F. Supp. 885, 905 (D.Ill.1960*), aff'd per curium,* 367 U.S. 909, 81 S.Ct. 1918, 6 L.Ed.2d 1249 (1961).

The underlying reasons for this Injunction have ceased to exist. Section 10(j) authorizes injunctive relief pending final Board adjudication. *Small v. Avanti Health Sys., LLC*, 661 F.3d 1180, 1187 (9th Cir. 2011) ("the underlying purpose of § 10(j) is to protect the integrity of the collective bargaining process and to preserve the [NLRB's] remedial power while it processes [a] charge.") (internal quotation marks omitted); *Fleischut v. Nixon Detroit Diesel, Inc.* 859 F.2d 26, 28–

1067904, at *6 (D. Ariz. Mar. 29, 2012) (denying contempt application where defendants substantially complied with the injunction to collect all copies of a copyrighted manual where defendants took all reasonable steps to comply, even though defendants' associates failed to respond to email requests to return any manuals in the associates' possession).

29 (6th Cir. 1988) ("Section 10(j) reflects Congress' view that interim injunctive relief to restore and preserve the status quo, *pending final Board adjudication*, may be required to avoid frustration of the basic remedial purposes of the [National Labor Relations] Act and possible harm to the public interest.") (emphasis added). The parties' August 7, 2015 settlement, which has enforceable effect of its own and which the Board determined would effectuate the purpose of the Act, serves as a final disposition of the allegations against the Company. Thus, the Injunction is no longer necessary to protect the Board's administrative procedures from being undermined. The final resolution of the claims by way of settlement constitutes a significant change related to the underlying reasons for the Injunction and render the Injunction no longer warranted. Accordingly, the Injunction should be dissolved. *See, e.g., Ctr. for Biological Diversity v. Salazar*, No. CV 07-0038-PHX-MHM, 2010 WL 3924069, at *3 (D. Ariz. Sept. 30, 2010) (D. Az. 2010) (where injunction was issued pending the outcome of agency's "status review . . . and finding," and the agency completed the review and issued its finding, "the underlying reason for the injunction . . . disappeared, the *status quo* [was] . . . maintained," and "[t]he injunction, therefore, [had to] be dissolved."); *Earth Island Inst. v. Bird*, No. 2:08-CV-01897 JAM-JF, 2011 WL 4479802, at *1 (E.D. Cal. Sept. 26, 2011) (same); *Burlington N. & Santa Fe Ry. Co. v. Bhd. of Locomotive Engineers*, 367 F.3d 675, 678-80 (7th Cir. 2004) (affirming district court's judgment to dissolve the preliminary injunction by rail carriers against a labor union because "the sole purpose of the preliminary injunction was to preserve the status quo pending resolution of the dispute by the arbitrator," which "purpose was effectuated after the final arbitration award issued.")

IV. CONCLUSION

For the foregoing reasons, the Company submits that it has complied with the Injunction – if not perfectly then in the very least substantially – and that neither it, nor Mr. Silva-Craig, who attested to the compliance in his September 8, 2015 declaration, should be held in contempt. Furthermore, with the Board having made its final decision with respect to the underlying dispute by entering into a settlement agreement, the Injunction is no longer necessary to reverse and maintain the *status quo* pending a conclusion to the litigation and it should be dissolved.

DATED: October 13, 2015

Respectfully submitted,

PROSKAUER ROSE LLP

KENNETH D. SULZER
MARK THEODORE
IRINA CONSTANTIN

By: /s/ Kenneth D. Sulzer
Kenneth D. Sulzer
Attorneys for Respondent,
Bodega Latina Corporation d/b/a El Super